

## REMARKS

Claims 1-33 are pending in this application. Claims 1-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Cannon (6,029,176). Claims 12-15, 26, and 28-31 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Cannon (6,029,176) in view of Uematsu (6,606,658). Applicant presumes the Office meant to reject these claims under 35 U.S.C. § 103(a) and will argue to this rejection.

### Examiner's Response to Applicant's Arguments Filed on 4/2/2004

The Office has rejected Applicant's argument (as stated by the Office) that "the meaning of [the term] demographic information from Cannon is different from the meaning of [the term demographics as used in] applicant's specification." The Office points out that "applicant['s] definition of demographic characteristics include current and peak disk space utilization of a database table...; spool space utilization; ...etc., are not recited in the rejected claim(s)." The Office goes on to state that "although the claims are interpreted in the light of the specification, limitations from the specification are not read into the claims."

Applicant is not seeking to import limitations from the specification into the claims. Instead, Applicant is using the specification, as is appropriate, to shed light on the meaning of the term "demographics," as it is used by Applicant in the claims. In construing the meaning of a term, the courts have held that there is a heavy presumption in favor of the ordinary meaning of claim language, unless there is within the written specification or prosecution history a clear definition. See Renishaw PLC v. Marposs Società per Azioni, 158 F.3d 1243, 1249, 48 USPQ2d 1117, 1121 (Fed. Cir. 1998). The issue here is the meaning of the word "demographics" in Applicant's claims. The Office has chosen to construe this term consistently with the Cannon patent and the American Heritage dictionary, which defines "demographics" as "the characteristics of human populations and population segments, especially when used to identify consumer markets." However, the Federal Circuit has held that "the intrinsic record [of the prosecution history file] may show that the specification uses the words in a manner clearly inconsistent with the ordinary meaning ... In such a case, the inconsistent

dictionary definition must be rejected." Texas Digital Systems, Inc. v. Telegenix, Inc., 308 F.3d 1193 (Fed. Cir 2002).

In this case, it is clear upon reading Applicants specification and claims that the ordinary meaning of the term "demographics" (*i.e.*, referring to human population characteristics) is inconsistent with Applicant's use of the term. Applicant makes no reference to human populations or any characteristics relating to humans. Applicant even describes demographic information in the specification as "information regarding utilization of storage devices in the database system, statistics of tables, and other information regarding tables." Applicant's usage of the term "demographics" is clearly inconsistent with the ordinary meaning of the term, and therefore, in accordance with current case law, the ordinary meaning must be rejected in favor of Applicant's usage in the specification.

Finally, by using the term "demographics" as Applicant has done in the specification, Applicant is acting as his own lexicographer and has clearly set forth a meaning that is sufficient for a person of ordinary skill in the art to understand. Applicant's meaning for the term "demographics" should therefore be used in place of its ordinary meaning. *See In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994).

In short, the Office has improperly rejected Applicant's argument regarding the meaning of the term "demographics." Cannon's use of the term demographics is clearly different from Applicant's. Cannon therefore does not show or suggest all the features of Applicant's invention, and Applicant's claims are allowable over this reference.

#### 103 Rejection of Claims 12-15, 26, and 28-31 in View of Cannon and Uematsu

With respect to claims 13-15 and 29-31, the Office has stated that "Uematsu discloses a row count and an average row size of rows [of] a portion of the table ...." The rows and tables described and claimed by Applicant are standard elements of a database, which is also an element in Applicant's claims. Uematsu simply has no reference to a database. The terms "database," "table," and "row" are never used by Uematsu. Furthermore, there is nothing in Uematsu that shows or suggests the need for or use of a database, let alone the use of rows or tables within a database. Likewise,

Cannon is also missing any reference to rows, row counts, and average row size of rows as used in a database table. These elements simply do not appear in either Cannon or Uematsu, and therefore these claims are allowable over these references.

Furthermore, the combination of Cannon and Uematsu is the result of improper hindsight reconstruction. Cannon relates to "methods and techniques for quickly and efficiently accessing and sorting large quantities of demographic data and media access information ...." The term "media" as used by Cannon refers to different ways to communicate with marketplace consumers, such as by television and radio, and the term "demographic data" refers to characteristics of a human population. Uematsu relates to "a server resource usage display method for displaying usage percentage ...." These two references have little in common and do not solve the same or even closely related problems. Uematsu is not even cognizant of the major elements of Cannon, such as demographics (as defined by Cannon), the use of databases, or how to access and sort large quantities of data. Likewise, Cannon is not even remotely aware of the major elements of Uematsu, such as displaying server resource usage or other server parameters. There simply would have been no motivation whatsoever, other than an improper hindsight reconstruction, for a person of ordinary skill in the art to combine these two references. The rejected claims are therefore allowable over this combination of references.

CONCLUSION

All claims are allowable over the art of record. Applicant therefore asks the Office to reconsider this application and allow all of the claims. Please charge any fees that might be due, excluding the issue fee, to deposit account 50-1673.

Respectfully,

Date: 7-19-04

A handwritten signature in dark ink, reading "Harden E. Stevens, III". The signature is fluid and cursive, with the last name "Stevens" being the most prominent part.

Harden E. Stevens, III  
Reg. No. 55,649

NCR Corporation  
1700 South Patterson Blvd.  
Dayton, Ohio 45479

(803) 939-6505  
(803) 939-5099 (fax)